

STATEMENT OF CONGRESSMAN HENRY A. WAXMAN
BEFORE THE ASSOCIATION OF FREESTANDING
RADIATION ONCOLOGY CENTERS

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INTRODUCTION

Good morning. It's a pleasure to be here with you again this year.

When we talked last year, we talked about the need for a patient bill of rights. We talked about better protections for the privacy of medical information. We talked about the frustrations both the patient and provider community were feeling with the impacts of the Medicare cuts contained in the Balanced Budget Act. We talked about trying to do something to reduce the use of tobacco, particularly by our kids. And we talked about the frustrations of a health care system where so many millions remain uninsured.

I guess all I need to say this year is: see my previous remarks!

I mean that as a joke, but actually it is no joke to the American people that this Congress has done so little to address the health care issues that ordinary people face every day.

And it's kind of a sick joke that now that we are about to adjourn in two or three weeks, we are in a rush to take some face-saving actions and distract people from the fact that up until now, we have done virtually nothing.

I guess we should be happy that there is a rush to accomplish at least a little of what the American people want, but the cynicism with which this is being approached leaves me a little breathless.

PATIENT BILL OF RIGHTS

Nowhere is this more obvious than with the debate we just went through on the Floor with the Patients Bill of Rights.

Just before the Columbus Day recess, the leadership of the House finally

bowed to the pressure of the entire Democratic Caucus and a significant number of their own Republican colleagues, to finally schedule House action on the Patient Bill of Rights.

They did this without any action by the relevant Committees of jurisdiction, even though three committees in the House had some responsibility for the legislation. They could not move bills through any of the Committees without losing control and having something like the Norwood-Dingell bill pass, so they blocked action.

They did this only after cobbling together several different alternative bills that were designed only for one purpose: to break apart the majority that supported the Norwood-Dingell bill.

They did this only after trying to change the debate to a series of proposals—not considered in any Committee, and not paid for-- that supposedly were designed to deal with the problem of the uninsured.

And most incredibly, they did this with a rule for consideration that denied the sponsors of the Norwood-Dingell bill the opportunity to add the provisions that paid for the costs of the proposal. They did this knowing that many, many Members of both parties do not want to support legislation if it is not paid for. It was a desperate attempt to stop passage.

But despite all these efforts to derail this legislation, they failed. And for one good reason: this bill makes sense, and it is something the American people understand and want.

You all know what the Patients Bill of Rights is about. It protects patients, and gives them some weapons to hold health plans accountable for their medical decisions. And it protects physicians, by banning gag rules and returning medical decision making to them. This is serious legislation, long debated and refined. Commented on and reviewed by patients and health care professionals alike. It was given as careful and responsible consideration as could be achieved in an atmosphere where none of the committees would take regular action.

To take this effort and try so hard to deliberately derail it thankfully failed. Maybe it was because it was so obvious that the alternatives were put out there simply to stop passage of any bill. The medical community, and the American

people, were not fooled by the smokescreen they attempted to throw up on this issue.

A lot of credit for the success in the House goes to Drs. Norwood and Ganske, who were willing to stand up to their party's leadership and fight for something they really believed in. They joined with a united Democratic caucus to form the majority that allowed us to move forward.

But while this success is truly gratifying, the fight is hardly won. We go into conference with a terrible Senate bill, and also burdened by the so-called access provisions in the House bill which are not paid for and designed to draw a Presidential veto.

So there's still a lot to resolve before we can claim victory. But at least we have a chance.

MEDICAL RECORDS PRIVACY

Another issue that cries out for action—and that should be bipartisan—is the protection of sensitive medical information.

No issue could be more personal or sensitive. And as information systems have developed, and broad access to data is more widespread, the issue becomes increasingly critical. When we add to this the implications of so many medical developments—medical and genetic screening, to name just one—it seems apparent that we must take appropriate steps to protect privacy.

This has to be done carefully. We do not want to inhibit in any way, the ability of health professionals to consult and assure the best advice and treatment. We do not want to inhibit medical research. We can't compromise efforts to assure quality or combat fraud. But I am convinced we can meet those goals and provide privacy protections.

Since I talked with you last year, I have been part of an effort to develop privacy legislation that establishes a strong Federal floor of protections, which will bring greater uniformity in this area, and which also maintains the authority of States to provide additional protections in sensitive areas. That bill, introduced by Congressman Condit, has 65 cosponsors. They represent a cross-section of views

from the most conservative to the most liberal. We tried—and succeeded—in developing a consensus approach. But that consensus has, unfortunately, been limited to Democrats. We have not been successful in getting our Republican colleagues to join us.

This is not an issue that should be partisan, any more than the Patient Bill of Rights should have been. But we cannot approach it with only the interests of business and insurers in mind. We have to balance that with the interest of the public and providers of medical care. That is what is going to be necessary if we are to make bipartisan progress on this issue.

In the meantime though, we will have action on the regulatory front. Earlier legislation charged the Secretary of HHS with the responsibility of establishing privacy standards if the Congress failed to act by August of this year. Unfortunately, her authority is limited to electronically transmitted records. Nonetheless, her action will establish important protections, and serve as a good baseline to judge any Congressional action in the future.

MEDICARE CUTS

When the Congress passed the Balanced Budget Act in 1997, we cut hundreds of billions of dollars out of the Medicare program.

We did that partly because we know we have to have a tight control on costs if we are to keep Medicare financially viable. We're always going to be searching for ways to spend those dollars as effectively as possible.

But unfortunately, there was another reason the Congress cut Medicare so much: we wanted to balance the budget, and like Willie Sutton said about the banks, Medicare was where the money was. Good health policy took a backseat.

Now we're all happy with the budget surplus that followed the BBA, and with the booming economy. But all of you know we are feeling the effects of cutting Medicare to meet a budget target that demanded too much from the program..

I voted against the Balanced Budget Act because I feared we would come to regret the effects it would have on our health care system. And now I've got a lot

of company. Most of the members are concerned about one effect or another.

The challenge we have in Congress now is how to remedy the situation, and restore funds where they are most needed, without totally undoing any fiscal discipline. We are struggling to balance the needs of teaching hospitals and home health providers, doctors and nursing homes. And of course, we can't forget the beneficiaries. If the program costs more, they pay more in premiums. And whatever funds we spend now mean less dollars to maintain the financial viability of the program, and add that critical missing benefit: prescription drugs.

I expect the next few weeks, before we leave, will see a frenzy of action on this front. But what we do, and how much we can do, is still uncertain.

PRESCRIPTION DRUGS

Before we leave the issue of Medicare, let me just add a few thoughts on this prescription drug issue.

I know there are those who question how we can add a prescription drug benefit to Medicare when it is already in financial trouble.

I think the question really is, how can we not. No one can believe in this day and age that we can have a decent medical care plan without coverage of prescription drugs. They are a key element in all medical treatment. And they will only become more critical in the future.

The elderly, of course, are by far the highest user of prescription drugs. They need that coverage the most. And right now, because they have to buy those drugs out-of-pocket, they pay higher prices for those drugs than anyone else.

I had my staff on the Government Reform Committee do some studies around the country. They did one in my district, and they've done them for over 90 members from Maine to Texas, from Minnesota to Arizona. What they have consistently found is that the elderly who have to buy their own drugs pay prices that are on average over twice what purchasers who get the best price pay, and sometimes range up to five and even 15 times as much. So HMOs and insurers and the Federal government get a lower negotiated price, and the elderly without coverage end up paying the bill.

I'm sponsoring legislation, along with Congressman Allen of Maine, that would assure that Medicare beneficiaries could get the best price when they have to pay for their drugs. It's not as helpful as coverage under Medicare would be. I support adding the benefit to the program. But the studies we've done that led to the Allen bill focus a bright light on how unfair the current situation is for elderly and disabled Americans.

TOBACCO

Now let me talk a little bit about tobacco. If you asked me what my biggest disappointment is when I look back at where we were last year and where we are now, it would be the collapse of the legislation to stop kids from smoking.

We were on the brink of finally taking this big, powerful industry to task. We were close to affirming and clarifying the FDA's jurisdiction over tobacco. We were close to funding strong anti-tobacco efforts to keep our kids from smoking. We were close to large increases in tobacco taxes, because higher prices mean less smoking, particularly for kids.

But the effort failed—the votes weren't there in the Senate, and in the House, the leadership wouldn't even let a bill come to the floor.

Further, the States settled their suits against the tobacco companies. They recovered funds that had been spent by the Medicaid program to provide care for tobacco-related illnesses. But half of the money they recovered had been spent not by them, but by the Federal taxpayer to finance the Federal share of Medicaid. Those funds provided the opportunity for supporting Federal anti-smoking efforts. We were ready to give most of that money to the States on just one condition: that those funds be spent on anti-smoking activities. We had within our grasp a tremendous direction of resources to this effort.

But the States had come to view all those funds as their money, and they were successful in getting the Congress to relinquish its claim to the Federal Medicaid dollars and any authority to direct the spending of those dollars on public health and anti-tobacco efforts.

The result, in all too many States, is that those funds aren't being used for anti-tobacco efforts at all. They're being used to build parks and roads.

The tobacco companies must be licking their chops that they have escaped so easily. But it is truly a public health tragedy. We have fumbled—at least for the moment—the opportunity to reduce the single largest preventable cause of death.

We have, however, some signs of hope. The courts may still affirm the FDA's authority; in fact, I think the case is a strong one. The Justice Department has decided to pursue a Federal case to recover Federal funds spent by Medicare, the veterans, and other health programs, on much the same legal theory the States pursued. And we may still drag this Congress, kicking and screaming, to impose higher taxes on tobacco. As President Clinton has consistently pointed out, that tax can give us a way out of the budget box the Congress finds itself in AND also do something good for the public health.

COVERAGE FOR THE UNINSURED

Finally, let me just address the issue of the uninsured. It is ironic and discouraging that we find ourselves at the end of one of the longest periods of economic prosperity and high employment with more than 44 million uninsured persons in this country, almost a million more than last year.

If we ever needed evidence that the trend in this country is that more and more people will find themselves without coverage under this system we have now, this is it.

We are seeing fewer people on Medicaid, at least partly as an unintended effect of welfare reform. Despite the passage of the Child Health Insurance Program (CHIP), we can't seem to make a dent in the number of uninsured children. Employers are dropping coverage, particularly for retirees. Even Medicare HMO's are cutting benefits.

We have to return to a serious effort to extend coverage to the uninsured. Perhaps the President's plan was too complicated and too threatening, but at least its goals were right.

I have no doubt that members of both parties are seriously concerned about this problem. But I regret that my Republican colleagues decided that the way to deal with this critical issue was to use it as a way to kill the patient bill of rights. Staying on this course only assures that we will fail to address both issues:

coverage for those who don't have it, and getting the services from their insurers and HMOs for those who do.

CONCLUSION

We've got a lot of problems out there that cry out for attention. This Congress has a pretty poor record of addressing them.

But I remain convinced that we will do better in the future. Because you know, and I know, that the American people care about their health care, and we ignore their problems at our peril.

I look forward to continuing to work with all of you on all of these issues.